

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PAULINE ST. DENIS and VUE MANAGEMENT, INC.

07 CV 8603

Plaintiffs,

-against-

SIRIUS SATELLITE RADIO, INC. and HERTZ  
CORPORATION, INC.,

Defendants.

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COMPLAINT

Plaintiffs, Pauline St. Denis ("St. Denis") and Vue Management, Inc. ("Vue") (collectively, "Plaintiffs") by their attorneys, Sam P. Israel, P.C., for their complaint against Sirius Satellite Radio, Inc. ("Sirius") and Hertz Corporation, Inc. ("Hertz") (collectively, "Defendants") allege, upon knowledge with respect to their own acts and upon information and belief with respect to the acts of all others, as follows:

**NATURE OF THE CASE**

1. As set forth herein, the Defendants have usurped the Plaintiffs' copyrighted photograph by reproducing, publishing and distributing the image, at a minimum, in advertisements throughout the United States.
2. This action seeks relief from the Defendants' willful infringement of the Plaintiffs' copyright in violation of the Copyright Act (17 U.S.C. §§106, 201, 501 and 504) in the form of compensatory and statutory damages; an injunction prohibiting future infringing reproductions of the photograph; compensatory damages arising from

breaches of a license agreement between the Plaintiffs and defendant Sirius, and; compensatory damages based on the Defendants' unjust enrichment by and through the use of the photograph.

**THE PARTIES**

3. Upon information and belief, defendant Sirius Satellite Radio, Inc. is a New York corporation maintaining its principal place of business at 1221 Avenue of the Americas, 36<sup>th</sup> Floor New York, New York 10020

4. Upon information and belief, defendant Hertz Corporation, Inc. is a New Jersey corporation maintaining its principal place of business at 225 Brae Blvd. Parkridge, N.J. 07656.

5. Plaintiff Pauline St. Denis is an individual residing at 150 E. 18<sup>th</sup> St apt AP New York, NY 10003.

6. Plaintiff Vue Management, Inc. is a New York corporation with its principal place of business at 580 Broadway, Suite 507 New York, NY 10012.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1332 and 1338(a) and (b), 15 U.S.C. § 1121 and the principles of pendent jurisdiction. The claims herein arise under the Copyright Act (17 U.S.C. §101 *et seq* ), and the common law. Venue lies in this District Court pursuant to 28 U.S.C. §1331(a) and due to a substantial part of the events that are the subject matter of this lawsuit occurring in this judicial district.

**BACKGROUND FACTS**

8. St. Denis is a professional photographer located in New York City and Vue is her manager. Vue procures commercial photography engagements for St. Denis and receives commissions based upon the consequent profits.

9. St. Denis is the creator and owner of a distinctive photograph of a male model (Louis Asaro) holding a Guitar in brightly colored blue tones; it is a “rock” image, culled from a series of 8. (The photograph and image are referred to herein as the “Photograph”).

10. On or about December 11, 2001, Vue-- on behalf of St. Denis-- entered into a licensing agreement for the use of the Photograph with the McCann Relationship Marketing agency which was, in turn, acting on behalf of defendant Sirius. The license was for one year without media limitations.

11. After the one year term of the license with McCann had elapsed, Vue and St. Denis discovered that Sirius had continued to use the Photograph in its advertisements. In or about October, 2004, the Plaintiffs notified Sirius of its violation of the license agreement that was entered on December 11, 2001 and expired on December 11, 2002.

12. Meanwhile, on or about September 27, 2004, St. Denis registered the Photograph with the U.S. copyright office as VAu-639-604. A copy of the registration is appended hereto as Exhibit 1.

13. In settlement of Sirius’ copyright infringements, on or about November 2, 2004, Vue and St. Denis agreed to grant a retrospective license to Sirius for the use of the Photograph for the period of December 11, 2002 through December 11, 2004. Sirius agreed to make no further use of the Photograph after such date.

14. Nevertheless, notwithstanding the express limited duration of the extended license, Sirius continued to use the Photograph in the context of a combined marketing campaign for Sirius and Hertz. (The campaign was apparently intended to promote Hertz rentals by reason of the availability of Sirius' services in its cars.)

15. In or about September, 2006—nearly two years after the license elapsed-- the Plaintiffs discovered that Sirius and Hertz had been reproducing Ms. Denis' photograph in advertisements placed, at a minimum, in airports throughout the United States.

16. Commencing in late 2006 and continuing until the date of this complaint, the Plaintiffs endeavored to have the Defendants address their continuing infringements of St. Denis' now federally registered copyright in the Photograph, but their efforts were rebuffed. As of the date hereof, the Defendants have refused to take responsibility for their deliberate infringements of St. Denis' copyright.

## **COUNT I**

### **(Against All Defendants--Copyright Infringement)**

17. The Plaintiffs repeat and reallege the allegations in each of the preceding paragraphs as though fully set forth herein.

18. At all relevant times, St. Denis is and has been the rightful owner of the copyright to the Photograph.

19. The Plaintiff has filed with the United States Copyright Office the deposit, application , and fee required for registration of the Photograph pursuant to 17 U.S.C. §§408, 409.

20. At times relevant to this action, neither Sirius nor Hertz had a license or form of permission to copy, duplicate, or claim copyright ownership in Ms. St. Denis' Photograph, nor to sell or distribute copies of the image embodied therein and/or derivative works based thereon, whether in whole or in part.

21. Yet, during such times the Defendants made unauthorized uses of the Photograph in derogation of and injurious to St Denis' exclusive rights as the owner of the copyright to the Photograph.

22. The Defendants' unauthorized exploitation of the plaintiff's property has occasioned substantial damage to the interests of both Ms. Denis and Vue, as her manager. See 17 U.S.C. §§106, 201 and 501, *et seq.*

23. Compounding the problem is that Sirius had previously made unauthorized use of the very same Photograph in 2004, a violation which resulted in a prior financial resolution between Sirius and Vue.

24. Having been thus advised of the impermissible nature of this conduct, the further unauthorized usage of Ms. Denis' copyrighted material can only be viewed as *knowing and willful* within the meaning of section 504 of the Copyright Act.

25. The Defendant's continued unauthorized exploitation of the Photograph is willful within the meaning of 17 U.S.C. §504 and entitles the Plaintiffs to an award of statutory damages.

26. The Plaintiff has no adequate remedy at law.

27. By reason of the foregoing acts of copyright infringement, the Plaintiff is entitled both to a permanent injunction enjoining the Defendants from continuing the aforesaid acts of infringement, and to an award of damages in an amount to be determined at trial.

**COUNT II**  
**(Against Sirius--Breach of Contract)**

28. The Plaintiffs repeat and reallege the allegations in each of the preceding paragraphs as though fully set forth herein.
29. In settlement of Sirius' earlier copyright infringements, on or about November 2, 2004, Vue and St. Denis agreed to grant a retrospective license to Sirius for the use of the Photograph for the period of December 11, 2002 through December 11, 2004. Sirius agreed to make no further use of the Photograph after such date.
30. By reason of its continued usage of the Photograph, Sirius has breached its agreement of November 2, 2004, and is liable to pay the Plaintiffs damages in an amount to be determined at trial.

**COUNT III**  
**(Against All Defendants--Unjust Enrichment)**

31. The Plaintiffs repeat and reallege the allegations in each of the preceding paragraphs as though fully set forth herein.
32. The Defendants have realized and may continue to realize substantial sums of money from its exploitation of the Photograph.
33. Consequently, the Defendants have been and will hereafter be unjustly enriched.
34. The Plaintiffs are entitled to recover those sums by which the Defendants have been and will hereafter be unjustly enriched.

**WHEREFORE**, the Plaintiff demands judgment against the Defendants, as follows:

- A. On Count I, enjoining the Defendants, their agents, affiliates and representatives from continuing use of the Plaintiff's copyright in the Photograph in violation of the Copyright Act, 17 U.S.C. §§501, 106 by copying, publishing and distributing copies of the Photograph; awarding statutory damages, based upon the Defendants' willfulness, and; awarding compensatory damages in an amount to be determined at trial, together with reasonable attorney fees;
- B. On Count II, granting an award of damages in an amount to be determined at trial;
- C. On Count III, awarding the Plaintiffs damages equal to those sums by which the Defendants have been and will hereafter be unjustly enriched;
- D. That the Plaintiffs be awarded their attorneys' fees; and
- E. That the Plaintiffs be awarded such other and further relief as justice may require.

**JURY TRIAL DEMANDED**

Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a trial by jury.

Respectfully submitted:

Dated: New York, New York  
September 23, 2007

**Sam P. Israel, P.C.**

**By: S/\_\_\_\_\_**  
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